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UNITED STATES BANKRUPTCY COURT

Not For Publication

DISTRICT OF VERMONT

IN RE:	)	
	)	
CORINNE R. FORANT,	)	Case No. 99-10961
	)	Chapter 7
Debtor.	)	

APPEARANCES:

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MEMORANDUM OF DECISION ON OBJECTION TO DEBTOR'S EXEMPTION

I. ISSUE

The issue before the Court is whether a debtor's exemption asserted with respect to an unliquidated claim may be allowed if it is not set forth in a specific dollar amount. The Court holds that a debtor's failure to assert a specific dollar value for an exemption in respect to an unliquidated claim does not mandate that the Court sustain an objection to the exemption.

II. BACKGROUND

The parties, Corinne Forant (the "Debtor"), and Agri-Mark, Inc., Cabot Creamery Cooperative, Inc., and Marcel Gravel (the parties other than the Debtor are collectively referred to as "the Companies"), stipulated to the following facts,[1] which the Court adopts verbatim for purposes of this Memorandum of Decision:

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[1] See Stipulation of Agreed Facts and Remaining Legal Issues, dated April 14, 2000 (doc. no. 76-1).

1. Corinne R. Forant is a 30 year old resident of Hardwick, Caledonia County, Vermont. She has four children and is in the process of a divorce. Ms. Forant is currently employed as a paralegal, a position she has held continuously since March 1998. Ms. Forant is the Debtor in the above-captioned chapter 7 case.

2. Agri-Mark, Inc. ("Agri-Mark") is a Delaware Corporation, registered to do business in Vermont, with a place of business in Methuen, Massachusetts. Agri-Mark is a creditor in the above-captioned chapter 7 case.

3. Cabot Creamery Cooperative, Inc. ("Cabot") is a Michigan Corporation and licensed to do business in Vermont, with a principal place of business in Cabot, Vermont. Cabot is a wholly owned subsidiary of Agri-Mark. Cabot is a creditor in the above-captioned chapter 7 case.

4. Marcel Gravel ("Gravel") is a resident of Wolcott, County of Caledonia, Vermont. Gravel is a creditor in the above-captioned chapter 7 case. Mr. Gravel is a creditor in the above-captioned chapter 7 case.

5. Douglas J. Wolinsky is a resident of Burlington, Vermont. Mr. Wolinsky is the chapter 7 trustee appointed in the above-captioned chapter 7 case (the "Trustee").

6. The Companies were co-defendants in a suit brought by the Debtor in federal district court in the District of Vermont (the "District Court"), styled *Corinne R. Forant v. Cabot Creamery Cooperative, Inc., Agri-Mark, Inc. and Marcel Gravel,* Case No. 2:97-CV-318 (the "Lawsuit").

7. The suit arose out of the Debtor's employment with Cabot. The Debtor began working at Cabot in September 1994 and an administrative assistant to Marcel Gravel, Cabot's plant manager. Approximately one month after the Debtor began working for Cabot, the Debtor and Gravel began a consensual sexual relationship. On June 14, 1996, the affair was discovered by the Debtor's husband. Thereafter, Gravel indicated to Cabot that he would not return to Cabot unless Debtor was no longer working there. The Debtor agreed to report to a different supervisor, but to maintain her same position and salary. Cabot subsequently transferred the Debtor to the administration building to work as a supervisor of retail development. This was a newly created position, at the same salary as Debtor's previous position. The Debtor asserts that she perceived this new position as a "make work" position; the Companies dispute this, and assert in response that both positions were supervisory positions at the same annualized salary, i.e., $35,189.96.

8. The Debtor worked as supervisor of retail development for less than two months before she was terminated. The Debtor was terminated by Cabot after she discovered a note on her supervisor's desk, which had the Debtor's name on it. The Debtor photocopied the note without her supervisor's knowledge, returned it to her supervisor's desk, and reported her finding to her other supervisor that day. Cabot terminated the Debtor. The Debtor, on or about March 19, 1999[,] filed her Amended Complaint, alleging a total of ten federal and state claims. Her claims

include a claim for loss of income, including past and future income.

9. On April 30, 1999, the Companies filed a motion for summary judgment in the Lawsuit. On or about June 2, 1999, the Debtor responded to the Companies' summary judgment motion. On June 15, 1999, the Companies filed a reply to the Debtor's response.

10. While the motion for summary judgment was pending, the Debtor, without notice to the Companies or the District Court, filed a voluntary petition under chapter 13 of the United States Bankruptcy Code (11 U.S.C. §§101 *et. seq.*) on or about July 8, 1999.[2] On Schedule C of the Debtor's bankruptcy schedules, she asserted an exemption in her "Claim against Cabot Creamery (Corinne R. Forant v. Cabot Creamery Cooperative, Inc., Agri Mark, Inc., Marcel Gravel, U.S. District Court for the District of Vermont, file no. 2:97 CV 318)" (the "Claim"). The Debtor did not ascribe a value to te Claim, having stated instead that the "Value of Claimed Exemption is the full value. The current marker value is unknown." The Debtor cited to 12 V.S.A. §§2740(19)(F), (G), and (I) for her assertion of exemption in the Claim.

11. On August 23, 1999, the District Court still unaware of the bankruptcy petition filed by the Debtor, issued its summary judgment ruling in favor of the Companies on the federal claims raised in the Lawsuit. Having dismissed the federal claims, the District Court declined to exercise supplemental jurisdiction over the remaining state law claims. On September 17, 1999, still unaware of the Debtor's bankruptcy, the Companies filed their bill of costs in the Lawsuit, seeking an award of certain costs they incurred in that suit pursuant to Fed. R. Civ. P. 54(d)(1). On October 5, 1999, the Debtor filed an objection to the Companies' bill of costs, but did not mention her bankruptcy filing. On October 14, 1999, the District Court awarded the Companies certain costs incurred in the Lawsuit.

12. On October 25, 1999, the Debtor filed a supplemental memorandum of law (the "Supplemental Memorandum") in the Lawsuit, opposing the award of costs to the Companies. In the Supplemental Memorandum. The Debtor informed the Companies and the District Court that she had filed for bankruptcy in a reference to this case as being evidence of her inability to pay the costs previously awarded by the District Court.

13. On November 15, 1999, the Companies and the Trustee moved for a 60-day extension of time in which to object to the Debtor's asserted exemption. The Companies also moved for authority to take the Rule 2004 examination of the Debtor. Both motions were granted by this Court [(Conrad, J.)].

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[2] On or about September 15, 1999, the Debtor voluntarily converted her chapter 13 case to a proceeding under chapter 7.

14. On or about January 27, 2000, the Companies and the Trustee filed their Objection to the Debtor's Claim of Exemption (the "Objection") in the Claim.

15. The Debtor timely filed her Objection by Debtor to Objection by Cabot Creamery Cooperative, Agri-Mark, Marcel Gravel, and Chapter 7 Trustee to Debtor's Claim of Exemption (the "Response"), opposing the Objection. In the Response, *inter alia*, the Debtor asked this Court to defer ruling on the Objection until the remaining claims of the Debtor against the Companies could be resolved. The Debtor's claims have yet to be asserted in state court. The Debtor filed amended Schedules I and J on March 1, 2000.

16. This Court [(Littlefield, J.; sitting by special designation)] held an initial hearing on the Objection and the Response on March 7, 2000. At the request of the Trustee, and by the consent of the Companies and without opposition from the Debtor, the hearing was continued to March 27, 2000.

17. At the hearing on March 27, 2000, the Trustee requested that this Court [(Littlefield, J.; sitting by special designation)] defer ruling on the Objection and the Response until the state law claims were resolved, provided that such a deferral not prejudice the Trustee's ability to later ask this Court to schedule a hearing on the Objection and the Response. The Companies opposed this request.

18. The Companies requested that, if the Court were to defer ruling on the entire Objection, the Court nonetheless proceed to consider the issues in the Objection that have been raised as a matter of law, on the basis of the papers before the Court. The Debtor and the Trustee acquiesced to this request.

III. DISCUSSION

The Companies object to the Debtor's exemption because (i) the exemption is not in a stated dollar value and (ii) the claim underlying the exemption has not been filed in an appropriate forum or matured into a monetary judgment.

An individual filing a petition for relief under one of the chapters of title 11, United States Code, must "file a list of property that the debtor claims as exempt", whether based upon state or federal law. 11 U.S.C. § 522(l)(b). The requirement to schedule exemptions serves two functions: first, to clarify title to property, and, second, to allow the trustee to determine which exemptions, if any, to challenge. Payne v. Wood, 775 F.2d 202, 206 (7th Cir. 1985).

The Vermont exemption statute relied upon by the Debtor in connection with the Lawsuit, in relevant part, exempts from attachment or execution:

> property traceable to or the debtor's right to receive, to the extent reasonably necessary for the support of the debtor and any dependents of the debtor:
>
> > (F) compensation for personal bodily injury, pain and suffering or actual pecuniary loss of the debtor or an individual on whom the debtor is dependent;
> >
> > . . .
> >
> > (I) compensation for loss of future earnings of the debtor or an individual on whom the debtor was or is dependent;

12 V.S.A. § 2740(19) (F), (I).[3] By its own terms, the statute does not establish a fixed dollar amount that may be exempted, but, rather, leaves a determination of what is "reasonably necessary" to the reviewing court. See, e.g., In re Tooker, 174 B.R. 33, 35 (Bankr. D.Vt. 1994) (discussion of "reasonable and necessary" standard under §2740(19)(H)). Furthermore, the statute is not qualified by the status of the claim; i.e., whether it is in suit or not, or reduced to judgment or not.

Neither the Court nor counsel for any of the objecting parties has located a decision directly on point. However, it is implicit in the case law concerning objections to exemptions in unspecified amounts that failure to state a specific dollar value for the exemption of an unliquidated claim (whether in litigation or not) does not mandate the sustaining of an objection to the (unliquidated) exemption.

In In re Ross, 128 B.R. 785, (Bankr. C.D. Cal. 1991), the debtor valued an alimony and support exemption as "unknown", even though the amount of alimony and support arrearages owed by her former spouse was listed at $120,000 in the debtor's personal property schedule. The trustee objected to the exemption's lack of specificity, and sought to compel the

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[3] The Debtor's Schedule C (exempt property) also lists subsection (G) of § 2740 in connection with the Lawsuit, which concerns wrongful death; however, the Court presumes that citation was in error.

debtor to amend her exemption to list a specific value. Ross, 128 B.R. at 786. The exemption statute relied upon by the debtor permitted her to exempt that amount that was "reasonably necessary" for her and any dependent's support, id. at 787, much like the statute at issue in the instant case. The Ross court did not deny the exemption as a matter of law, as urged by the Companies in the instant case, but held that because (i) the maximum corpus of the property claimed exempt was known to be $120,000, and (ii) the debtor was in the best position to determine what was "reasonably necessary" for her support, the debtor should be given 30 days to amend her exemption by stating a specific value therefor, and that the trustee be given 30 days thereafter to object to the amended exemption. Id. at 788-90.[4]

In In re Hanson, 226 B.R. 106 (Bankr. D.Idaho 1998), the debtor asserted an exemption in respect of an unliquidated claim against her employer. The trustee objected to the exemption, arguing that any proceeds thereof would not be exempt. Hanson, 226 B.R. at 107. Like the case at hand, the exemption statute at issue in Hanson exempted proceeds to the extent "reasonably necessary" for support of debtor and debtor's dependents. Id. at 108. After discussing the particulars of the case and the exemption statute, the court concluded:

> Because at this time there is no settlement or recovery, the Court is unable to enter a final ruling on Trustee's objection. If funds become available from the legal action, the parties shall renotice Trustee's objection for further hearing.

Id. at 109. Accordingly, the fact that the exemption was not stated in a fixed amount did not result in a mandatory denial; rather, it caused the court to sua sponte order that the trustee's objection be held in abeyance pending liquidation of the claim.

Another instructive decision, with background facts similar to those in the case at hand, is the Supreme Court's decision in Taylor v. Freeland & Kronz, 503 U.S. 638 (1992). In

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[4] Bankruptcy Rule 1009 states that a "schedule . . . may be amended by the debtor as a matter of course at any time before the case is closed." Fed. R. Bankr. P. 1009(a).

Taylor, the debtor filed for bankruptcy under chapter 7 while she was pursuing an employment discrimination claim in state court. Taylor, 503 U.S. at 640. The debtor scheduled this claim as exempt, describing it as "proceeds from lawsuit" and listing its value as "unknown". Id. Under applicable state or federal exemptions, the debtor was only entitled to a limited amount of the proceeds. Id. at 642. The trustee did not object to the exemption within the 30-day period allowed by Bankruptcy Rule 4003(b). Id. at 641. However, upon later learning that the suit had been settled for a substantial sum, the trustee filed a complaint against the debtor's attorneys seeking turnover of the settlement proceeds. Id. The Bankruptcy Court sided with the trustee, concluding that the debtor could not retain more than permitted under the limited exemption, even though she had listed the value as "unknown", and the trustee had not timely objected. Id. The District Court affirmed the Bankruptcy Court, but the Third Circuit Court of Appeals reversed on the grounds that the trustee's objection was untimely, and without reference to the unliquidated nature of the claimed exemption. Id. at 641-42.

On further appeal to the Supreme Court, the Taylor trustee argued, essentially, that permitting exemptions to be asserted without a specific dollar value would encourage the assertion of meritless exemptions in the hope that there would be no objection. Id. at 643. The Supreme Court dismissed the trustee's argument and ruled against him on the grounds of timeliness. Id. Importantly, the Supreme Court gave no indication that the lack of a specific value for the exemption was relevant.

Thus, based on Ross, Hanson and Taylor, this Court finds that failure to state a specific dollar value for an exemption in respect to an unliquidated claim is not fatal.

IV. CONCLUSION

For the reasons set forth above, the Court holds that the Debtor's failure to assert a specific dollar value for her exemption in respect to her unliquidated claim does not mandate that

the objection to her exemption be sustained.

Accordingly, the objections of the Companies which are based upon the lack of specificity in the claimed exemption are overruled, and the objections to the exemption based on other grounds are deferred until the Debtor's claims against the Companies are liquidated.

Dated at Rutland, Vermont this *11th* day of July, 2000.

/s/ Colleen A. Brown
Honorable Colleen A. Brown
United States Bankruptcy Judge

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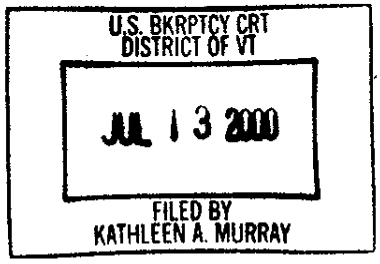
ORDER ON MEMORANDUM OF DECISION ON
OBJECTION TO DEBTOR'S EXEMPTION

In accordance with the Memorandum of Decision On Objection To Debtor's Exemption dated July 11, 2000 (capitalized terms used herein are as defined therein), the objections of the Companies which are based upon the lack of specificity in the claimed exemption are overruled, and the objections to the exemption based on other grounds are deferred until the Debtor's claims against the Companies are liquidated.

Dated at Rutland, Vermont this 12th day of July, 2000.



Honorable Colleen A. Brown
United States Bankruptcy Judge